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BY ECF FILING

Hon. Vernon S. Broderick
United States District Court
Southern District of New York
Thurgood Marshall United States Courthouse
40 Foley Square, Room 415
New York, NY 10007

RE: Consent Letter Motion to Enter Consolidated Briefing Schedule in *Fairfield Sentry (In Liquidation) et al. v. Citibank NA London, 19-cv-03911 (Lead Case) and Related Appeals*

Dear Judge Broderick,

We represent Kenneth Krys, in his capacity as Joint Liquidator and Foreign Representative (the “Liquidator”) of Fairfield Sentry Ltd. (in liquidation), Fairfield Sigma Ltd. (in liquidation), and Fairfield Lambda Ltd. (in liquidation) (collectively, the “Funds”), Plaintiffs-Appellants in the above-referenced appeals. We respectfully submit this letter motion (the “Motion”) to seek entry of a consolidated briefing schedule in the 238 related appeals listed on Exhibit A to this letter (the “Appeals”), which Appeals the Liquidator, by separate letter-motion jointly submitted today with Defendants-Appellees, has requested that the Court consolidate pursuant to Bankruptcy Rule 8003(b)(2), Federal Rule 42(a), and this Court’s inherent authority.

Upon the consolidation of appeals, entry of a consolidated briefing schedule is appropriate. *See, e.g.*, Order, *Elliot G. Sagor v. Irving H. Picard (In re Bernard L. Madoff Investment Securities, LLC)*, 1:15-cv-01263-PAE (S.D.N.Y. Mar. 3, 2015), ECF No. 5; Order, Transcript, *CNH Partners LLC v. SunEdison, Inc. (In re SunEdison, Inc.)*, 1:17-cv-04778-ALC (S.D.N.Y. Aug. 2, 2017), ECF Nos. 17, 18 at 19:24-20:16. Following discussions with Cleary Gottlieb Steen & Hamilton LLP, which firm has communicated with a group of 230 attorneys for Defendants-Appellees regarding the Appeals, the Liquidator hereby encloses a proposed briefing schedule drafted jointly with Cleary Gottlieb (the “Proposed Briefing Schedule,” attached hereto as Exhibit B). Under the Proposed Briefing Schedule, briefing would proceed in a consolidated fashion with omnibus submissions and limited, specific provisions for individualized issues. *See* Proposed Briefing Schedule ¶¶ B-E.



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The Proposed Briefing Schedule further provides that for two issues included in the Liquidator's Statements of Issues on Appeal¹—namely, (i) whether the Section 546(e) and Section 546(g) safe harbors can apply to “purely foreign transfers”² targeted for avoidance by Chapter 15 foreign representatives; and (ii) whether certain Defendants-Appellees’ consent to subscription agreements constitutes consent to the Bankruptcy Court’s personal jurisdiction, both of which issues arise from rulings that were not the basis for the dismissal of any claims below (the “Interlocutory Rulings”)—appellate briefing is stayed pending further order of the Court. *See* Proposed Briefing Schedule ¶ A. This provision allows the Court and the parties to conserve resources because (i) a review of the Interlocutory Rulings is unnecessary at this time to resolve whether the claims dismissed below were properly dismissed on the merits; and (ii) any review of the Interlocutory Rulings is appropriately delayed pending the Bankruptcy Court’s resolution of certain additional issues concerning the Section 546(e) and Section 546(g) safe harbors and the Bankruptcy Court’s personal jurisdiction over Defendants-Appellees, which will be the subject of forthcoming briefing below. *See* Proposed Briefing Schedule at 2-5.

Following inquiries by Cleary Gottlieb to the above-referenced group of 230 attorneys for Defendants-Appellees, Cleary Gottlieb has indicated that they are not aware of any Defendant-Appellee that objects to the relief sought by this Motion.

For the foregoing reasons, Plaintiffs-Appellants, with the consent of Defendants-Appellees, respectfully request that the Court enter the Proposed Briefing Schedule.

Respectfully,

BROWN RUDNICK LLP

/s/ David J. Molton

David J. Molton

Cc: Thomas J. Moloney, Esq.
Joseph M. Kay, Esq.

¹ See, e.g., Plaintiffs’ Statement of Issues to be Presented and Designation of Items to be Included in the Record on Appeal, *Fairfield Sentry Ltd. (in Liquidation) et al. v. RBC Dominion Sec. et al.*, Adv. Pro. No. 10-03502 (SMB) (Bankr. S.D.N.Y. May 13, 2019), ECF No. 67 (“Statement of Issues on Appeal”) ¶¶ 2, 3.

² See Memorandum Decision Granting in Part and Denying in Part Defendants’ Motions to Dismiss and Plaintiffs’ Motions for Leave to Amend, *Fairfield Sentry Limited, et al. v. Theodoor GGC Amsterdam, et al.*, Adv. Pro. No. 10-03496 (SMB) (Bankr. S.D.N.Y. Dec. 6, 2018), ECF No. 1743, at 54.